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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _23 February 2005_.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-52_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-52_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
    application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2.   **Claims 1-3,10,11,24-26,32-34 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6314455 to Cromer et al.** Referring to claim 1, Cromer et al. discloses upon startup, determining whether a BIOS of a computer system is corrupt (From figure 4, 412.); continuing with a normal boot if said BIOS is not corrupt (From figure 4, 410.); if said BIOS is corrupt: initializing components in a boot block of said computer system sufficient to establish a communications connection with a recovery server, locating said recovery server, connecting to said recovery server, and sending system information to said recovery server ((From figure 4, 412, 422.); downloading an uncorrupted version of said BIOS from said recovery server based on said system information (From figure 4, 424.); programming said uncorrupted BIOS onto said computer system's BIOS storage area (From figure 4, 426.); and rebooting (From figure 4, 428.).

3.   Referring to claims 2 and 33, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems

104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

4.   Referring to claims 3, 11, 26, and 34, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

5.   Referring to claim 10, Cromer et al. discloses receiving at a server a request for an uncorrupted version of a BIOS transmitted by a computer system with a corrupted version of said BIOS detected during startup (Figure 4, 412, 422.); receiving information from said computer system (Figure 4, 412, 422.); and responsive to said system information, transmitting an uncorrupted version of said BIOS to said computer system (Figure 4, 424.).

6.   Referring to claim 24, Cromer et al. discloses a computer system, said computer system comprising a processor, a BIOS recovery program, a BIOS storage area

containing said BIOS, RAM, a first communications system and a chipset to control the

flow of data between the processor, the motherboard bus and the RAM (Figure 2.); and

a recovery server, said recovery server comprising a processor, a storage medium, and

a second communications system (Figure 1, 100, wherein the server is capable of

processing, storing, and communicating.); wherein said processor of said computer

system, in response to detecting a corrupt version of said BIOS detecting during startup,

is adapted to execute said BIOS recovery program to: initialize in a boot block of said

computer system, said chipset, RAM, and first communications system; locate said

recovery server, connect to said recovery server through said first and second

communications systems; send system information to said recovery server (Figure 4,

412, 422.); download from said recovery server an uncorrupted version of said BIOS

based on said system information (Figure 4, 424.); stores said uncorrupted version of

said BIOS into said BIOS storage area (Figure 4, 426.); and reboot said computer

system (Figure 4, 428.).

7.   Referring to claim 25, Cromer et al. discloses said first and second

communication system are network cards (From line 45 of column 3, "FIG. 1 illustrates

a pictorial representation of a data processing system including a plurality of client

computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in

accordance with the method and system of the present invention. Server computer

system 100 is connected to a hub 102 utilizing a local area network (LAN) connector

bus 106. Respective client systems 104 also connect to hub 102 through respective

LAN busses 106. The preferred form of the network conforms to the Ethernet

specification and uses such hubs. It will be appreciated, however, that other forms of

networks, such as token ring, may be utilized to implement the invention.").

8.   Referring to claim 32, Cromer et al. discloses a computer system, said computer

system comprising a processor, a bus, a BIOS recovery program, a BIOS storage area

containing said BIOS, RAM, and a first communications system and a chipset to control

the flow of data between the processor, the bus and the RAM (Figure 2.); wherein said

computer system's processor, in response to detecting a corrupt version of said BIOS

during startup, is adapted to execute said BIOS recovery program to: initialize in a boot

block of said chipset of said computer system, RAM, and said first communications

system, locate a recovery server, connect to said recovery server through said first

communications system, send system information to said recovery server (Figure 4,

412, 422.); download from said recovery server an uncorrupted version of said BIOS

based on said system information (Figure 4, 424.); store said uncorrupted version of

BIOS into said BIOS storage area (Figure 4, 426.); and reboot (Figure 4, 428.).

9.   Referring to claim 48, Cromer et al. discloses a computer system, said computer

system comprising a BIOS and components sufficient in a boot block to enable recovery

of an uncorrupted BIOS from a remote server (Figure 2.); wherein said computer

system, in response to detecting a corrupt version of said BIOS during startup (Figure 4,

412.), is configured to operate said components to: connect to a remote server, send

system information to said remote server (Figure 4, 412, 422.); receive, based on said

system information, an uncorrupted version of said BIOS from said remote server

(Figure 4, 424.); store said uncorrupted version of said BIOS (Figure 4, 426.), and

reboot said computer system (Figure 4, 428.).

Claim Rejections - 35 USC § 103

10.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

11.   **Claims 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable**

over US 6314455 to Cromer et al. in view of JP409258965A to Aoki. Referring to

claim 15, Cromer et al. discloses upon startup of a computer system, checking whether

a BIOS of said computer system is corrupt (Figure 4, 412.); continuing with a normal

boot if said BIOS is not corrupt (Figure 4, 410.); if said BIOS is corrupt: initializing

components in a boot block of said computer system sufficient to establish a

communications connection with a recovery server, locating a recovery server,

connecting to said recovery server and sending system information to said recovery

server (Figure 4, 412, 422.); transmitting, based on said system information, an

uncorrupted version of said BIOS; receiving said uncorrupted version of said BIOS at

said computer system (Figure 4, 424.); program said uncorrupted version of said BIOS

onto a BIOS storage area of said computer system; and rebooting said computer

system (Figure 4, 426.). Although Cromer et al. do not specifically disclose that utility

software can be transmitted to the client and executed to program the BIOS, sending a

flash update utility along with the flash update is known in the art. From Aoki, "A host

station 1 transmits an update program obtained by previously changing the operation

and the version of the program to the base station 2." A person of ordinary skill in the art

at the time of the invention would have been motivated to send a flash update utility because, from Aoki, "an update program [is] obtained by previously changing the operation."

12.   Referring to claim 16, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

13.   Referring to claim 17, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be

appreciated, however, that other forms of networks, such as token ring, may be utilized

to implement the invention.").

14.   Referring to claim 18, although Cromer et al. does not specifically disclose said

computer system connects to said recovery server over a wide area network,

connecting over a WAN is notoriously well known in the art. Examiner takes official

notice for wide area networks. A person of ordinary skill in the art at the time of the

invention would have been motivated to connect to a server over a WAN because it

provides connectivity over a wide geographic area. Further, from line 58 of column 3, "A

"network" may include any type of data communications channel, such as an Ethernet

network, token ring, X.10, or X.25. Those skilled in the art will recognize that the

invention described herein may be implemented utilizing any type of data

communications channel. However, the preferred embodiment is implemented utilizing

an Ethernet network."

15.   Referring to claims 19 and 23, although Cromer et al. does not specifically

disclose said computer system connects to said recovery server over the internet,

connecting over the internet is notoriously well known in the art. Examiner takes official

notice for the internet. A person of ordinary skill in the art at the time of the invention

would have been motivated to connect to a server over the internet because it provides

up to global connectivity. Further, from line 58 of column 3, "A "network" may include

any type of data communications channel, such as an Ethernet network, token ring,

X.10, or X.25. Those skilled in the art will recognize that the invention described herein

may be implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

16.   Referring to claim 20, although Cromer et al. does not specifically disclose one of

said components is a modem, including a modem in a computer system is notoriously

well known in the art. Examiner takes official notice for modems. A person of ordinary

skill in the art at the time of the invention would have been motivated to include a

modem in a computer system because it allows a computer to access a

communications medium, such as a cable network or telephone lines, for data

communications. Further, from line 58 of column 3, "A "network" may include any type

of data communications channel, such as an Ethernet network, token ring, X.10, or

X.25. Those skilled in the art will recognize that the invention described herein may be

implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

17.   Referring to claim 21, although Cromer et al. does not specifically disclose said

computer system connects to said recovery server over a direct dial connection,

connecting a computer by dialing into a network is notoriously well known in the art.

Examiner takes official notice for dial-up connections. A person of ordinary skill in the art

at the time of the invention would have been motivated to use dial-up a connection to

connect to a server because he or she would have been able to connect wherever there

is a telephone connection. Further, from line 58 of column 3, "A "network" may include

any type of data communications channel, such as an Ethernet network, token ring,

X.10, or X.25. Those skilled in the art will recognize that the invention described herein

may be implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

18.   Referring to claim 22, although Cromer et al. does not specifically disclose said

computer system connects to said recovery server though an internet service provider,

connecting to a server over an ISP is notoriously well known in the art. Examiner takes

official notice for ISPs. A person of ordinary skill in the art at the time of the invention

would have been motivated to connect to a server using an ISP because ISPs provide

access to the internet, a global communications network that interconnects networks of

various design. Further, from line 58 of column 3, "A "network" may include any type of

data communications channel, such as an Ethernet network, token ring, X.10, or X.25.

Those skilled in the art will recognize that the invention described herein may be

implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

19.   **Claims 40-47 are rejected under 35 U.S.C. 103(a) as being unpatentable

over US 6314455 to Cromer et al.** Referring to claim 40, Cromer et al. discloses a

recovery server, said recovery server comprising a processor, a storage containing an

uncorrupted version of a BIOS in a boot block for a computer system; and a first

communications system (Figure 1, 100, wherein server is capable of processing, stores

at least a flash image for transmission, and is capable of communicating.); wherein said

recovery server, in response to receiving a request transmitted by said computer

system with a corrupted version of said BIOS detected during startup (Figure 4, 412.), is

configured to connect to said computer system, receive system information from said

computer system (Figure 4, 412, 422.), and transmit said uncorrupted version of said

BIOS to said computer system (Figure 4, 424.). Although Cromer et al. does not

specifically disclose this flash image is stored on a hard drive, using a hard drive to

store data is notoriously well known in the art. An example of this can be seen in any

typical personal computer system, among other things. A person of ordinary skill in the

art at the time of the invention would have been motivated to store data on a hard drive

because, among other reasons, it is nonvolatile.

20.   Referring to claim 41, Cromer et al. discloses one of said components is a

network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a

data processing system including a plurality of client computer systems 104 coupled to

a server computer system 100 utilizing a hub 102 in accordance with the method and

system of the present invention. Server computer system 100 is connected to a hub

102 utilizing a local area network (LAN) connector bus 106. Respective client systems

104 also connect to hub 102 through respective LAN busses 106. The preferred form of

the network conforms to the Ethernet specification and uses such hubs. It will be

appreciated, however, that other forms of networks, such as token ring, may be utilized

to implement the invention.").

21.   Referring to claim 42, Cromer et al. discloses said computer system has a local

area network (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a

data processing system including a plurality of client computer systems 104 coupled to

a server computer system 100 utilizing a hub 102 in accordance with the method and

system of the present invention. Server computer system 100 is connected to a hub

102 utilizing a local area network (LAN) connector bus 106. Respective client systems

104 also connect to hub 102 through respective LAN busses 106. The preferred form of

the network conforms to the Ethernet specification and uses such hubs. It will be

appreciated, however, that other forms of networks, such as token ring, may be utilized

to implement the invention.").

22.   Referring to claim 43, although Cromer et al. does not specifically disclose said

computer system connects to said recovery server over a wide area network,

connecting over a WAN is notoriously well known in the art. Examiner takes official

notice for wide area networks. A person of ordinary skill in the art at the time of the

invention would have been motivated to connect to a server over a WAN because it

provides connectivity over a wide geographic area. Further, from line 58 of column 3, "A

"network" may include any type of data communications channel, such as an Ethernet

network, token ring, X.10, or X.25. Those skilled in the art will recognize that the

invention described herein may be implemented utilizing any type of data

communications channel. However, the preferred embodiment is implemented utilizing

an Ethernet network."

23.   Referring to claims 44 and 47, although Cromer et al. does not specifically

disclose said computer system connects to said recovery server over the internet,

connecting over the internet is notoriously well known in the art. Examiner takes official

notice for the internet. A person of ordinary skill in the art at the time of the invention

would have been motivated to connect to a server over the internet because it provides

up to global connectivity. Further, from line 58 of column 3, "A "network" may include

any type of data communications channel, such as an Ethernet network, token ring,

X.10, or X.25. Those skilled in the art will recognize that the invention described herein

may be implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

24.   Referring to claim 45, although Cromer et al. does not specifically disclose one of

said components is a modem, including a modem in a computer system is notoriously

well known in the art. Examiner takes official notice for modems. A person of ordinary

skill in the art at the time of the invention would have been motivated to include a

modem in a computer system because it allows a computer to access a

communications medium, such as a cable network or telephone lines, for data

communications. Further, from line 58 of column 3, "A "network" may include any type

of data communications channel, such as an Ethernet network, token ring, X.10, or

X.25. Those skilled in the art will recognize that the invention described herein may be

implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

25.   Referring to claim 46, although Cromer et al. does not specifically disclose said

computer system connects to said recovery server though an internet service provider,

connecting to a server over an ISP is notoriously well known in the art. Examiner takes

official notice for ISPs. A person of ordinary skill in the art at the time of the invention

would have been motivated to connect to a server using an ISP because ISPs provide

access to the internet, a global communications network that interconnects networks of

various design. Further, from line 58 of column 3, "A "network" may include any type of

data communications channel, such as an Ethernet network, token ring, X.10, or X.25.

Those skilled in the art will recognize that the invention described herein may be

implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

26.   **Claims 4-9,12-14,27-31 and 35-39 are rejected under 35 U.S.C. 103(a) as**

being unpatentable over US 6314455 to Cromer et al. as applied to claims 1, 2, 10,

24, 25, 32, and 33 above. Referring to claims 4, 12, 27, and 35, although Cromer et al.

does not specifically disclose said computer system connects to said recovery server

over a wide area network, connecting over a WAN is notoriously well known in the art.

Examiner takes official notice for wide area networks. A person of ordinary skill in the art

at the time of the invention would have been motivated to connect to a server over a

WAN because it provides connectivity over a wide geographic area. Further, from line

58 of column 3, "A "network" may include any type of data communications channel,

such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will

recognize that the invention described herein may be implemented utilizing any type of

data communications channel. However, the preferred embodiment is implemented

utilizing an Ethernet network."

27.   Referring to claims 5, 9, 13, 28, 31, 36, and 39, although Cromer et al. does not

specifically disclose said computer system connects to said recovery server over the

internet, connecting over the internet is notoriously well known in the art. Examiner

takes official notice for the internet. A person of ordinary skill in the art at the time of the

invention would have been motivated to connect to a server over the internet because it

provides up to global connectivity. Further, from line 58 of column 3, "A "network" may

include any type of data communications channel, such as an Ethernet network, token

ring, X.10, or X.25. Those skilled in the art will recognize that the invention described

herein may be implemented utilizing any type of data communications channel.

However, the preferred embodiment is implemented utilizing an Ethernet network."

28.   Referring to claims 6 and 37, although Cromer et al. does not specifically

disclose one of said components is a modem, including a modem in a computer system

is notoriously well known in the art. Examiner takes official notice for modems. A person

of ordinary skill in the art at the time of the invention would have been motivated to

include a modem in a computer system because it allows a computer to access a

communications medium, such as a cable network or telephone lines, for data

communications. Further, from line 58 of column 3, "A "network" may include any type

of data communications channel, such as an Ethernet network, token ring, X.10, or

X.25. Those skilled in the art will recognize that the invention described herein may be

implemented utilizing any type of data communications channel. However, the

preferred embodiment is implemented utilizing an Ethernet network."

29.   Referring to claim 7, although Cromer et al. does not specifically disclose said

computer system connects to said recovery server over a direct dial connection,

connecting a computer by dialing into a network is notoriously well known in the art.

Examiner takes official notice for dial-up connections. A person of ordinary skill in the art

at the time of the invention would have been motivated to use dial-up a connection to

connect to a server because he or she would have been able to connect wherever there

is a telephone connection. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

30.   Referring to claims 8, 30, and 38, although Cromer et al. does not specifically disclose said computer system connects to said recovery server though an internet service provider, connecting to a server over an ISP is notoriously well known in the art. Examiner takes official notice for ISPs. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server using an ISP because ISPs provide access to the internet, a global communications network that interconnects networks of various design. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

31.   Referring to claim 14, although Cromer et al. does not specifically disclose said server and said computer system are connected through said computer system's modem, connecting through a modem is notoriously well known in the art. Examiner takes official notice for a modem. A person of ordinary skill in the art at the time of the invention would have been motivated to connect using a modem because modems are devices of extremely common inclusion in modern day computer systems, designed for

data communications with another computer system. Further, from line 58 of column 3,

"A "network" may include any type of data communications channel, such as an

Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that

the invention described herein may be implemented utilizing any type of data

communications channel. However, the preferred embodiment is implemented utilizing

an Ethernet network."

32.   Referring to claim 29, although Cromer et al. does not specifically disclose said

first and second communication systems are modems, using a modem in a computer to

connect to another computer with a modem is notoriously well known in the art.

Examiner takes official notice for modems. A person of ordinary skill in the art at the

time of the invention would have been motivated to connect using a modem because

modems are devices of extremely common inclusion in modern day computer systems,

designed for data communications with another computer system. Further, from line 58

of column 3, "A "network" may include any type of data communications channel, such

as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize

that the invention described herein may be implemented utilizing any type of data

communications channel. However, the preferred embodiment is implemented utilizing

an Ethernet network."

33.   **Claims 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable**

over US 6314455 to Cromer et al. as applied to claims 1 and 15 above, and further

in view of US 5319519 to Sheppard et al. Referring to claims 49-52, Cromer

discloses, in the background, connecting to a conventional recovery source;

downloading an uncorrupted version of said BIOS from said conventional recovery

source; programming said uncorrupted BIOS onto said computer system's BIOS

storage area; and rebooting said computer system, wherein said conventional recovery

source is a removable disk (From line 4 of column 2, "POST and BIOS are both typically

stored as a single flash image in a storage device such as a flash memory. This image

is commonly called the "boot code". If the flash image of POST and BIOS is corrupted,

the boot of the system will not be able to be completed. To recover from a defective

flash image error, known systems include a boot block. The boot block is storage within

the flash memory which includes a small segment of code sufficient to bring the system

up, and to read a recovery image from a floppy drive. A diskette must be inserted into

the floppy drive which includes a good copy of the flash image. The code stored in the

boot block is not typically updated. In order for the system to boot from the boot block, a

technician must remove the cover of the computer system, and physically move a

jumper coupled to the flash memory. The jumper is utilized to indicate whether a boot

will be attempted from the boot block or the main flash memory. The technician then

must replace the cover, insert an appropriate diskette in the floppy drive, and restart the

computer. The computer will then attempt to boot from the boot block."). Although,

clearly, this passage refers to procedures taken prior to the availability of a recovery

server, a person of ordinary skill in the art at the time of the invention, in all likelihood,

would have been able to understand that if remote data was unavailable (located), and

that if the data is still required, local data must be used instead. An example of this

common understanding among people of ordinary skill in the art is shown by Sheppard,

from line 35 of column 2, "When networks or network software are unavailable, the person must take his data base with him. He can do this by disconnecting his hard disk drive from his PC, transporting his hard disk drive with him, and then reconnecting the disk drive to a computer located at the remote site. Alternatively, the person can up-load his data base to a large number of floppy disks one at a time, transport the floppy disks to the remote site, and then down-load the data base from the floppy disks one at a time onto a computer located at the remote site. Unfortunately, both procedures are cumbersome and time-consuming." A person of ordinary skill in the art at the time of the invention would have been motivated to prepare for the unavailability of a remote data source because, from Sheppard, "When networks or network software are unavailable, the person must take his data base with him."

Response to Arguments

34.   Applicant's arguments filed 23 February 2005 have been fully considered but they are not persuasive. Regarding Applicant's argument that Cromer is different from standard computer systems as the invention of Cromer is described as always starting-up from the boot block and not the boot code, which, regardless of veracity, does not distinguish Applicant's invention utilizing claim language as related to Applicant's specification. However, Examiner puts forth that Cromer's boot block includes boot code (from the portion cited by Applicant, "code stored in the boot block"), and further, that convention computer systems start by booting from the portion of the system that includes boot code.

35.   Regarding Applicant's argument that Applicant's invention is distinguished by

"initializing components in a boot block of said computer system...", clearly, as cited

above, Cromer also uses the boot block which comprises boot code (see column 3 of

Cromer).

36.   Regarding Applicant's argument that Cromer is concerned with POST code as

opposed to the claimed transmission of a BIOS, Examiner points to column 4 of Cromer

where Cromer clearly discloses that recovery flash code is received from server, that

this recovery flash code is a replacement flash image designed to update *the* flash

image stored in flash, and that *the* flash image refers to the image stored in flash

memory, said flash memory storing the BIOS and boot block.

37.   In response to applicant's argument that Aoki is directed to a different problem

than the claimed invention, the fact that applicant has recognized another advantage

which would flow naturally from following the suggestion of the prior art cannot be the

basis for patentability when the differences would otherwise be obvious. See *Ex parte*

Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

38.   Regarding Applicant's argument that Examiner did not cite any art for sending a

flash update utility, see Aoki.

39.   Regarding Applicant's argument concerning Windows update, Examiner does not

appear to have made any rejection using Windows update in the previous office action.

40.   In response to applicant's arguments against the references individually, one

cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.

1986). Applicant points to Aoki's downloading of an update regardless of corruption,

where this is addressed elsewhere.

41.   In response to applicant's argument that Aoki's system uses an operative BIOS,

the test for obviousness is not whether the features of a secondary reference may be

bodily incorporated into the structure of the primary reference; nor is it that the claimed

invention must be expressly suggested in any one or all of the references. Rather, the

test is what the combined teachings of the references would have suggested to those of

ordinary skill in the art. See *In re Keller,* 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

42.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

US 5604862 to Midgely et al., "The invention has many advantages, including the

following. A nearly-up-to-date copy of every file of the protected set is always available

in the storage cache or the removable media. The snapshots can be used either to

restore an image of a protected server if the server fails, or a user can get access to

historical snapshots of files, for instance to compare the current version of a file to a

version for a specified prior time. An ordinary user can, in seconds, access any file

snapshot that was stored on an unavailable server node, or can request a restore of any

version snapshot available to the Integrity Server. "

43. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-

3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00

PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert W. Beausoliel, Jr. can be reached on (571) 272-3645. The fax

phone number for the organization where this application or proceeding is assigned is

703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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Business Center (EBC) at 866-217-9197 (toll-free).

gc

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